

1 PATRICIA ZAMORA, SBN 209840  
2 Attorney at Law  
3 P.O. Box 689  
4 Downey, CA 90241  
5 (562) 927-7444

6 Attorneys for  
7 Plaintiff HECTOR ALVARADO

8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA

10 ) CASE NUMBER:  
11 )  
12 HECTOR ALVARADO, an individual )  
13 )  
14 Plaintiff, ) COMPLAINT  
15 )  
16 vs. ) [JURY TRIAL DEMANDED]  
17 )  
18 ACCURAY, INC. a California Corporation; )  
19 TIBER FOREIGN EXCHANGE and DOES 1 )  
20 through 10, inclusive, )  
21 )  
22 Defendants. )  
23 )  
24 )  
25 )  
26 )  
27 )  
28 )

20 **COMES NOW** Plaintiff HECTOR ALVARADO, and shows this Honorable Court the  
21 following:

22  
23 PLAINTIFF

24 1. At all times hereinafter mentioned, Plaintiff HECTOR ALVARADO was and still  
25 is a resident of Mexico and all times relevant herein did business with Defendants by reaching  
26 into the Jurisdictional bounds of this Court.

27  
28 COMPLAINT FOR DAMAGES

DEFENDANTS

2. Defendant ACCURAY, INC. is registered to do business in the State of California with the California Secretary of State, under the Corporation number C2966930 and has an office at 1310 CHESAPEAKE TERRACE, SUNNYVALE CA 94089.

3. Defendant TIBER FOREIGN EXCHANGE is a Mexican Company whose address is Avenida Paseo De La Reforma No. 265 Piso 17 Colonia Cuauhtemoc C.P. 06500 Mexico D.F., and is the company to whom which Plaintiff has been told that the consideration described herein below was deposited.

JURY DEMAND

4. Plaintiff in this matter demands a Jury trial on any and all causes of action.

JURISDICTION

5. Jurisdiction in this case is proper under Diversity Jurisdiction pursuant to 28 U.S.C. 1332(a)(2), because this is an action between a foreign national, whose residence is in Mexico, and a Delaware Corporation, licensed and registered to do business in California, and which was at all times relevant herein doing business in, soliciting business from Plaintiff and accepting funds wired to it in California.

FACTS

6. On or about December 31, 2009 Defendant solicited money from Plaintiff while Plaintiff was in Mexico.

7. Defendant stated that Plaintiff in exchange for the consideration of \$150,000.00 would transfer to Plaintiff the rights, title and ownership in a product known as the "Accuray" laser, which product allowed the end user to conduct medical and surgical procedures with said laser.

COMPLAINT FOR DAMAGES

1           8.       The total amount of the consideration that was applicable to the "Accuray" was  
2 more than \$90,000.00, the remaining \$60,000.00 was consideration for Plaintiff to become a  
3 licensed representative to sell, market and distribute said "Accuray".

4           9.       Defendant Accuray promised that Plaintiff would make extraordinary sales, and  
5 profits from said investment and business relationship. After much consideration, and planning,  
6 Plaintiff decided to work with Accuray.

7           10.      The Plaintiff and Defendant agreed that Plaintiff would make the consideration  
8 payments in two wire transfers over the time between December 31, 2009 and July 31, 2010 in  
9 the amounts of \$114,722.75 and \$35,592.18 respectively.

10           11.     Plaintiff fulfilled all of its obligations and conditions, and transferred the total  
11 amount of \$150,000.00 to Defendant's bank account timely.

12           12.     Thereafter, Plaintiff has never transferred title to the "Accuray" and has never  
13 licensed, provided, acquiesced and has in the contrary refused to grant a license to distribute, sell  
14 or market the "Accuray" to Plaintiff.

15           13.     Plaintiff discovered the facts that Defendant refused to grant the license, transfer  
16 the title to the Accuray, and took a position adverse to Plaintiff in July 2010.

17  
18                           **CAUSES OF ACTION**  
19                           **FIRST CAUSE OF ACTION**

20                           UNITED NATIONS CONVENTION ON CONTRACTS FOR THE  
21                           INTERNATIONAL SALE OF GOODS (1980) [CISG]CSIG  
22                           (AGAINST ALL DEFENDANTS)

23           14.     Plaintiff incorporates paragraphs 1 to 13 and re-alleges them as if they were  
24 alleged herein.

25  
26  
27  
28                           COMPLAINT FOR DAMAGES

15. On or about December 2009, Plaintiff and Defendant entered into a contract, wherein Plaintiff agreed to pay \$150,000 to Defendant for the right, title and ownership of the Accuray, and for the right to market, sell and distribute said Accuray.

16. Defendants breached the agreement when Plaintiff transferred the consideration to Defendants, and Defendants never transferred, nor acquiesced and or granted a license to Plaintiff.

17. Plaintiff performed all conditions required on its part to perform according to the contract.

18. Defendant unreasonably, and without caused breached the agreement to transfer title, rights and ownership and failed to grant a license to Plaintiff.

19. Plaintiff has been injured in the amount of \$150,000 plus interest on the sums deposited with Defendants.

20. Plaintiff has also lost out on profits that would have been derived from the sales of said Accuray, and distribution.

## SECOND CAUSE OF ACTION

BREACH OF CONTRACT  
(AGAINST ALL DEFENDANTS)

21. Plaintiff incorporates paragraphs 1 to 20 and realleges them as if they were alleged herein.

22. On or about December 2009, Plaintiff and Defendant entered into a contract, wherein Plaintiff agreed to pay \$150,000 to Defendant for the right, title and ownership of the Accuray, and for the right to market, sell and distribute said Accuray.

23. Defendants breached the agreement when Plaintiff transferred the consideration to Defendants, and Defendants never transferred, nor acquiesced nor granted a license to Plaintiff.



1           24.     Plaintiff performed all conditions required on its part to perform according to the  
2 contract.

3           25.     Defendant unreasonably, and without cause breached the agreement to transfer  
4 title, rights and ownership and failed to grant a license to Plaintiff between July, 2010 and  
5 present.  
6

7           26.     Plaintiff has been injured in the amount of (\$150,000.00) plus interest on the sums  
8 deposited with Defendants.

9           27.     Plaintiff has also lost profits that would have been derived from the sales of said  
10 ACCURAY, and distribution fees.  
11

12           28.     Plaintiff has also been forced to bring this action, and the Contract between  
13 Plaintiff and Defendant contains an attorney's fee provision, to which Plaintiff is entitled to  
14 attorney's fees and costs.  
15

16                           **THIRD CAUSE OF ACTION**

17                           PROMISSORY ESTOPPEL  
18                           (AGAINST ALL DEFENDANTS)

19           29.     Plaintiff incorporates paragraphs 1 to 28 and realleges them as if they were  
20 alleged herein.

21           30.     Defendant made a promise to Plaintiff that it would transfer right, title and  
22 ownership and grant a license to distribute market and sell the Accuray to Plaintiff.

23           31.     Defendant knew at the time of making said representation that this promise would  
24 induce and thereby did induce the Plaintiff to make a deposit with Defendant in the amount of  
25 \$150,000.00.  
26  
27  
28

COMPLAINT FOR DAMAGES

1        32. Injustice can only be avoided by enforcement of an order forcing Defendant to pay  
2 to Plaintiff the amount of \$150,000.00 plus interest from December 2009 until the time of  
3 judgment.  
4

5                                    **FOURTH CAUSE OF ACTION**

6                                    MONEY HAD AND RECEIVE / OPEN BOOK ACCOUNT  
7                                    (AGAINST ALL DEFENDANTS)

8        33. Plaintiff incorporates paragraphs 1 to 32 and realleges them as if they were  
9 alleged herein.  
10

11        34. During the last four years, Defendant became indebted to Plaintiff, when  
12 Defendant stated an open book account for money due to Plaintiff.

13        35. Within the last four years, Defendant stated in writing by and between Plaintiff  
14 and Defendant in which it was agreed that Defendant would be indebted to Plaintiff.

15        36. Within the last four years, Defendant stated in writing an account for money had  
16 and received by Defendant for the use and benefit of Plaintiff  
17

18        37. Within the last four years Defendant stated in writing an account for money lent  
19 by Plaintiff to Defendant at Defendant's special request and for money paid, laid out and  
20 expended to or for Defendant at Defendant's special instance and request.

21        38. Plaintiff has been damaged in the amount of at least \$150,000.00 plus daily  
22 interest at the legal rate from December 2009 until present.  
23

24        //

25        //

26        //

27        //

28                                    COMPLAINT FOR DAMAGES

**FIFTH CAUSE OF ACTION**  
**FRAUD MISREPRESENTATION**  
**(AGAINST ALL DEFENDANTS)**

39. Plaintiff incorporates paragraphs 1 to 38 and realizes them as if they were alleged herein.

40. On or about December 2009, Defendant through Defendants misrepresented to Plaintiff that Defendants intended to and would grant a license to Plaintiff to market, sell and distribute the Accuray. Further, Defendants falsely misrepresented, concealed, and did not disclose that none of the aforementioned was never intended to occur, in that Defendants failed to transfer title to, ship nor provide any access to the Accuray, despite Plaintiff transferring all funds required of himself.

41. Defendants were knowledgeable of the aforementioned facts, in that Defendants failed to perform the basic act necessary to perform the aforementioned, in that Defendant failed to transfer, identify, designate, or provide access to the Accuray for Plaintiffs benefit.

42. Plaintiff is informed and believes that Defendants' intent to defraud is shown by Defendants intent to induce Plaintiffs to perform all of their duties, while Defendants did not provide, did not designate, failed to provide the actual Accuray, and never provided access thereto.

43. Plaintiff justifiably relied upon Defendants aforementioned assertions and promises to provide access, transfer title, designate and deliver the Accruay, when Plaintiff paid compensation on two separate times to Defendants.

44. Plaintiff has been damaged in the amount of \$150,000.00 which represent the amount deposited in full with Defendants, lost interest at the legal rate from December 2009, lost profits, and attorneys fees and costs that are incurred in bringing this action.

COMPLAINT FOR DAMAGES



**SEVENTH CAUSE OF ACTION**

**CALIFORNIA BUSINESS AND PROFESSIONS CODE §17200  
(AGAINST ALL DEFENDANTS)**

45. Plaintiff incorporates paragraphs 1 to 44 and realizes them as if they were alleged herein.

46. California Business and Professions Code Section 17200 provides in pertinent part:

17200. As used in this chapter, unfair competition shall mean and include any unlawful, unfair or fraudulent business act or practices and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code)

47. Defendants' acts and practices as detailed above constitute acts of Unfair Competition. Defendants have engaged in an unlawful, unfair or fraudulent business act and/or practice within the meaning of California Business & Professions Code §17200.

48. Defendants have engaged in an "unlawful" business act and/or practice by engaging in the conduct set forth above.

49. Through the above-described conduct, Defendants have engaged in an "unfair" business act or practice in that the justification for such actions and the refusal to notify the general public of the true facts, either in the past or presently, based on the business acts and practices described above is outweighed by the gravity of the resulting harm, particularly considering the available alternatives, and/or offends public policy, is immoral, unscrupulous, unethical and offensive, or causes substantial injury to consumers.

50. By engaging in the above-described conduct, Defendants have engaged in a "fraudulent" business act or practice in that the business acts and practices described above had a tendency and likelihood to deceive Plaintiffs and the general public.

COMPLAINT FOR DAMAGES



1           51.     The above-described unlawful, unfair or fraudulent business acts and practices  
2 engaged in by Defendants continue to this day and/or present a threat of irreparable harm to the  
3 general public. Defendants have failed to publicly acknowledge the wrongfulness of their actions  
4 and provide the complete relief required by the statute.  
5

6           52.     Pursuant to California Business & Professions Code §17203, Plaintiff, on behalf  
7 of the general public, seek a temporary, preliminary and/or permanent order from this Court  
8 prohibiting Defendants from refusing to continue to engage in the unlawful, unfair, or fraudulent  
9 business acts or practices set forth in this Complaint and from failing to fully disclose the true  
10 facts as set forth herein, and or ordering Defendants or their representatives to stop misleading  
11 the public and engage in a corrective campaign, particularly in light of the public misperception  
12 created by Defendants' and/or their representatives' misstatements and omissions of material fact,  
13 as well as provide appropriate equitable monetary relief as the court deems just and appropriate  
14 to all persons with a vested interest therein.  
15

16           53.     Plaintiffs, on behalf of the general public, also request the Court issue an order  
17 granting the following injunctive and/or declaratory relief:  
18

- 19           a.     That a judicial determination and declaration be made of the  
20 rights of the general public, and the corresponding  
21 responsibilities of Defendants;  
22           b.     That Defendants' representatives be ordered to cease and desist  
23 from making misrepresentations to the general public regarding  
24 the equipment sold, leased and encumbered; and  
25  
26  
27  
28

COMPLAINT FOR DAMAGES

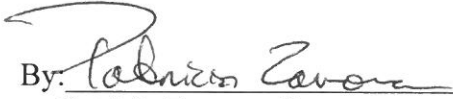
- 1 c. That Defendants be required to provide equitable monetary  
2 relief to the members of the general public adversely affected  
3 by the practices at issue.  
4

5 PRAYER FOR RELIEF

6 WHEREFORE, Plaintiff demands:

- 7 1. Money damages in the amount of \$150,000.00  
8 2. A Permanent injunction against the Defendant from forcing the Defendants from  
9 selling any Accuray to any person other than Plaintiffs until this lawsuit is resolved;  
10 3. An order from the Court in the form of a Permanent Injunction, in which the  
11 Defendants are forced to transfer, identify, designate or provide the Accuray or its  
12 equivalent to Plaintiff; and  
13 4. An amount to be determined by the court in interest for the legal rate from December  
14 2009 until time of judgment.  
15 5. An amount to be determined by the Court in the form of attorneys fees and costs of suit  
16 incurred by this Plaintiff in bringing this action.  
17 6. Any further relief which the court may deem appropriate.  
18  
19  
20

21  
22 Dated: 7 / 21 / 2014

23 By:   
24 Patricia Zamora, Esq.  
25 Attorney for Plaintiffs.  
26  
27  
28

COMPLAINT FOR DAMAGES